

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 20, 2004

To: The Commission
(Meeting of April 22, 2004)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2430 (Wiggins): Commercial air carriers: hot air balloons.**
As introduced February 19, 2004

Legislative Subcommittee Recommendation: Support, if amended.

Summary: This bill would remove hot air balloons and hot air balloon operators from Commission jurisdiction and from specified insurance coverage requirements.

Existing law, P.U. Code secs. 5500-5512, directs the Commission to require liability insurance for all commercial air operators operating aircraft in California.¹ Existing law, P.U. Code sec. 5500, defines “commercial air operator” as “any person owning, controlling, operating, renting or managing aircraft for any commercial purpose for compensation”. Existing law, P.U. Code sec. 5501, defines “aircraft” as “any contrivance used for navigation of, or flight in, the air”.

Existing law, P.U. Code sec. 5505, directs the Commission, after a public hearing, to set the amount of liability insurance “set the amount of liability insurance, required by Section 5503, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator”.

Pursuant to these statutes, the Commission adopted a general order (now G.O. 120-C) in 1972 requiring commercial air operators to procure liability insurance and to file evidence of that insurance with the Commission. Since most commercial balloon operations carry 20 or fewer passengers per balloon, the applicable provision of G.O. 120-C provides in pertinent part:

¹ Section 5503. “The Public Utilities Commission shall require every commercial air operator to procure, and continue in effect so long as the commercial air operator continues to offer his services for compensation, adequate protection against liability imposed by law upon a commercial air operator and also upon any person using, operating or renting an aircraft with the permission, expressed or implied, of a commercial air operator for the payment of damages for personal bodily injuries, including death resulting there from, and property damage as a result of an accident.”

(A) Aircraft with Passenger Seating Capacity, 1 to 20 persons.

1. Aircraft Passenger Bodily Injury and Death Liability -- a minimum for one passenger seat of at least \$100,000 and a minimum for each accident in any one aircraft of at least an amount equal to the total produced by multiplying \$100,000 by the number of passenger seats in the aircraft.

2. Aircraft Bodily Injury and Death Liability (excluding persons aboard aircraft) -- a minimum of \$100,000 for one person in one accident, and a minimum of \$300,000 for each accident.

3. Aircraft Property Damage Liability -- a minimum of \$100,000 for each accident.

(G.O. 120-C, 1(A)1-3)

This bill would exempt hot balloon operators from the definition of “commercial air operator” and hot air balloons from the definition of “aircraft” in existing law, thereby providing that the Commission would no longer require hot air balloon operators to procure and maintain minimum levels of liability insurance protection for passengers and persons on the ground.

Analysis: Commercial hot air ballooning was a relatively small industry in California until the 1980s, when it began expanding to serve customer demand. Petitioners state that today approximately 50 companies offer balloon rides throughout California. The operations are concentrated in popular tourist regions, including the Napa Valley, Sonoma Valley, Palm Springs, Temecula, and San Diego areas. Petitioners state that most of the commercial balloons are designed to carry more than six passengers, and the largest balloons can carry up to 16 passengers. Hot air balloons are certificated and regulated by the FAA. Airworthiness standards for manned balloons are set forth in 14 CFR Part 31, pilots and instructors must be licensed under 14 CFR Part 61, and operating and flight rules are set forth in 14 CFR Part 91.

On May 30, 2003, hot air balloon operators and the Professional Balloon Pilots Association, among others, filed an Application and Petition (A.03-05-039 and P.03-05-040) for relief from the minimum levels of liability insurance coverage required for balloon operators under existing law. The Application/Petition (Application) was filed after many months of communication with staff concerning the inability of these operators to obtain minimum levels of liability insurance coverage. Applicants were ultimately concerned that they would have to either cease operations or operate in violation of current law.

In July of 2003, the Commission granted relief in D. 03-07-036, modified by D. 03-07-047, by authorizing hot air balloon operators to: (1) file insurance policies specifying only listed aircraft with limited operating authority, (2) limit their operating authority on

the number passengers per balloon according to levels of coverage on file with the Commission, and (3) self-insure, as specified.²

These decisions provided interim relief only and directed the assigned ALJ to promptly convene public hearings to consider applicants' request for relief from insurance requirements of GO 120-C and allow for full consideration of the insurance requirements applicable to hot air balloon operators set forth in existing law.

The passage of AB 2430 would result in hot air balloon operators no longer being required to procure and maintain liability insurance protection for passengers and persons on the ground. Other non-Commission regulated entities, such as amusement park rides, are subject to insurance requirements under existing law.³ The Occupational Health and Safety Branch of the Department of Industrial Relations (Cal-OSHA) enforces these requirements.

The Legislative Subcommittee supports ceding the jurisdiction to an appropriate state agency, such as one that regulates amusement park rides, that can require the appropriate levels of insurance for balloons and balloon operators. Therefore, the Legislative Subcommittee would support the bill, if amended to meet these requirements.

LEGISLATIVE HISTORY

Asm. Trans.: 14-0 (do pass) (4/19/04)

SUPPORT/OPPOSITION

Support: Support: Napa Valley Aloft, Inc.; Professional Balloon Pilots Association of Napa County, Inc.; Balloon Excelsior; Calistoga Balloons of Napa Valley; California Dreamin'; Airship and Balloon Company; Balloon Above the Desert, Inc.; Balloon Federation of America; Up & Away Ballooning, Inc.; High Hopes; Delta Relocation Services, Inc.; Napa Valley Balloons; Merryvale Vineyards; six individuals.

Opposition: None on file.

LEGISLATIVE STAFF CONTACT

Alan LoFaso, Legislative Director
CPUC-OGA

alo@cpuc.ca.gov
(916) 327-7788

Date: April 20, 2004

² See Modified Interim Plan in D. 03-07-036, modified by D. 03-07-047, Ordering paragraphs 2-8.

³ See Labor Code sec. 7900 et. seq. and Labor Code sec. 7912, specifically.

BILL LANGUAGE:

BILL NUMBER: AB 2430 INTRODUCED
 BILL TEXT

INTRODUCED BY Assembly Member Wiggins

FEBRUARY 19, 2004

An act to amend Sections 5500 and 5501 of the Public Utilities Code, relating to commercial air carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2430, as introduced, Wiggins. Commercial air carriers: hot air balloons.

Existing law requires the Public Utilities Commission to require every commercial air operator, as defined, to procure and continue in effect, adequate protection against liability for personal bodily injuries and property damage as a result of an accident, that may be imposed by law upon the operator and upon any person using, operating, or renting an aircraft, as defined, with the permission of the operator.

This bill would exclude a corporation or person furnishing or providing transportation by hot air balloon for entertainment or recreational purposes from the definitions of commercial air operator and aircraft.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5500 of the Public Utilities Code is amended to read:

5500. As used in this article, "commercial air operator" means any person owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation. *"Commercial air operator" does not include any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for entertainment or recreational purposes.*

SEC. 2. Section 5501 of the Public Utilities Code is amended to read:

5501. As used in this article, "aircraft" means any contrivance used for navigation of, or flight in, the air. *"Aircraft" does not include a hot air balloon furnished or providing transportation for entertainment or recreational purposes.*